

House Bill 1442

By: Representatives Lunsford of the 110th, Mangham of the 94th, and Hatfield of the 177th

A BILL TO BE ENTITLED
AN ACT

To amend Titles 36 and 46 of the Official Code of Georgia Annotated, relating to local government and to public utilities and public transportation, respectively, so as to provide for the creation, authority, powers, and membership of the Local Government Prepaid Wireless 9-1-1 Fee Collection Authority; to provide for definitions; to change certain provisions relating to the remittance of 9-1-1 charges; to provide for payment by prepaid wireless service suppliers to the Local Government Prepaid Wireless 9-1-1 Fee Collection Authority and not to the Emergency 9-1-1 Assistance Fund; to provide for related matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 36 of the Official Code of Georgia Annotated, relating to local government, is amended by adding a new chapter to read as follows:

"CHAPTER 93

36-93-1.

This chapter shall be known and may be cited as the 'Local Government Prepaid Wireless 9-1-1 Fee Collection Authority Act.'

36-93-2.

As used in this chapter, the term:

(1) 'Authority' means the Local Government Prepaid Wireless 9-1-1 Fee Collection Authority established pursuant to Code Section 36-93-3.

(2) 'Board of directors' or 'board' means the governing body of the authority.

(3) 'Enhanced ZIP Code' has the same meaning as provided in Code Section 46-5-122.

(4) 'Local government' means a county, municipality, regional authority, or consolidated government that provides 9-1-1 services.

(5) 'Prepaid wireless service' has the same meaning as provided in Code Section 46-5-122.

(6) 'Public safety answering point' has the same meaning as provided in Code Section 46-5-122.

(7) 'Wireless enhanced 9-1-1 charge' has the same meaning as provided in Code Section 46-5-122.

36-93-3.

(a)(1) There is established the Local Government Prepaid Wireless 9-1-1 Fee Collection Authority as a body corporate and politic, an instrumentality of the state, and a public corporation; and by that name the authority may contract and be contracted with and bring and defend actions.

(2) All counties, municipalities, consolidated governments, and regional authorities providing 9-1-1 service pursuant to the Georgia Emergency Telephone Number 9-1-1 Service Act of 1977 shall form the authority. Additional counties, municipalities, consolidated governments, or regional authorities shall become members upon their adoption of a resolution or ordinance to impose the monthly 9-1-1 charge. Any member of the authority no longer providing 9-1-1 or enhanced 9-1-1 services may withdraw from the authority subject to the terms of any contract, obligation, or agreement with the authority.

(3) The purpose of the authority shall be to administer, collect, audit, and remit prepaid wireless 9-1-1 revenue for the benefit of local governments in Georgia, on such terms and conditions as may be determined to be in the best interest of the operation of local government in light of the following factors:

(A) The public interest in providing cost-efficient collection of revenues;

(B) Increasing compliance in collection of revenues provides fairness to the persons and entities currently paying their share and the taxpayers who make up for the revenue shortfall through higher tax rates;

(C) Easing the administrative burden on vendors and service suppliers; and

(D) Such other factors as are in the public interest and welfare of the citizens of Georgia.

(b)(1) Control and management of the authority shall be vested in a board of directors, which shall consist of the following members:

(A) Four members who shall be elected officials of a county governing body, county managers, or county administrators from a county with a public safety answering point

to be appointed by the Governor upon recommendation by the Association County Commissioners of Georgia;

(B) One county finance director from a county with a public safety answering point who is a certified public accountant appointed by the Governor upon recommendation by the Association County Commissioners of Georgia;

(C) One elected official of a city governing body, city manager, or city finance director who is a certified public accountant from a city with a public safety answering point appointed by the Governor upon recommendation by the Georgia Municipal Association;

(D) One county 9-1-1 director appointed by the Governor upon recommendation by the Association County Commissioners of Georgia;

(E) One city 9-1-1 director appointed by the Governor upon recommendation by the Georgia Municipal Association;

(F) Two members of the 9-1-1 Advisory Committee appointed by the Governor; and

(G) Two ex officio nonvoting members from the telecommunications industry appointed by the Governor.

(2) The initial term for appointments made pursuant to subparagraphs (A) and (B) of paragraph (1) of this Code section shall be from January 1, 2011, until December 31, 2013. The initial term for appointments made pursuant to subparagraphs (C), (D), and (E) of paragraph (1) of this Code section shall be from January 1, 2011, until December 31, 2012. The initial term for appointments made pursuant to subparagraphs (F) and (G) of paragraph (1) of this Code section shall be from January 1, 2011, until December 31, 2011. All subsequent terms shall be for three years. Any vacancies shall be filled by appointment of the original appointing authority and shall be for the remainder of the term.

(3) Each member of the board of directors may be authorized by the authority to receive an expense allowance and reimbursement from funds of the authority in the same manner as provided for in Code Section 45-7-21. Except as specifically provided in this subsection, members of the board of directors shall receive no compensation for their services.

(4) Six members of the board of directors shall constitute a quorum; and the affirmative votes of four members of the authority shall be required for any action to be taken by the authority.

(5) The directors shall elect one of their members as chairperson and another as vice chairperson and shall also elect a secretary and a treasurer or a secretary-treasurer, either of whom may, but need not be, a 9-1-1 director.

(6) The board of directors may promulgate rules and regulations for its own government and for discharging its duties as may be permitted or required by law or applicable rules and regulations.

(c) The authority shall have perpetual existence.

(d) The authority through its board of directors shall have the power and authority:

(1) To have a seal and alter the same at its pleasure;

(2) To make and execute contracts, lease agreements, and all other instruments necessary or convenient to exercise the powers of the authority or to further the public purpose for which the authority is created;

(3) To acquire by purchase, lease, or otherwise and to hold, lease, and dispose of real or personal property of every kind and character, or any interest therein, in furtherance of the public purpose of the authority;

(4) To apply for and to accept any gifts or grants or loan guarantees or loans of funds or property or financial or other aid in any form from the federal government or any agency or instrumentality thereof, or from the state or any agency or instrumentality thereof, or from any other source for any or all of the purposes specified in this Code section and to comply, subject to the provisions of this Code section, with the terms and conditions thereof;

(5) To contract with state agencies or any local government for the use by the authority of any property, facilities, or services of the state or any such state agency or local government or for the use by any state agency or local government of any facilities or services of the authority; and such state agencies and local governments are authorized to enter into such contracts;

(6) To fix and collect fees and charges for data, media, and incidental services furnished by it to any individual or private entity;

(7) To deposit or otherwise invest funds held by it in any state depository or in any investment which is authorized for the investment of proceeds of state general obligation bonds and to use for its corporate purposes or redeposit or reinvest interest earned on such funds;

(8) To exercise any power granted by the laws of this state to public or private corporations that is not in conflict with the public purpose of the authority;

(9) To do all things necessary or convenient to carry out the powers conferred by this Code section and to carry out such duties and activities as are specifically imposed upon the authority by law;

(10) To hire an attorney to provide legal services;

(11) To sue and to be sued;

(12) To provide for the collection of moneys;

(13) To manage, control, and direct such funds and the expenditures made therefrom;

(14) To distribute the moneys at the discretion of the authority in such manner and subject to such terms and limitations as the authority in its discretion determines will best further the public purpose of the authority; and

(15) To exercise all other powers necessary for the development and implementation of the system provided for in this Code section.

(e) The creation of the authority and the carrying out of its corporate purposes are in all respects for the benefit of the people of this state and are public purposes. The authority shall be carrying out an essential governmental function on behalf of counties, municipalities, consolidated governments, and local authorities in the exercise of the powers conferred upon it by this Code section and is, therefore, given immunity from liability for carrying out its intended functions. The authority shall not be required to pay taxes or assessments upon any property acquired or under its jurisdiction, control, possession, or supervision.

(f) Any action against the authority shall be brought in the Superior Court of Fulton County, and such court shall have exclusive, original jurisdiction of such actions; provided, however, that actions seeking equitable relief may be brought in the county of residence of any member of the authority.

(g) All money received by the authority pursuant to this Code section shall be deemed to be trust funds to be held and applied solely as provided in this chapter.

(h) The provisions of this Code section shall be deemed to provide an additional and alternative method for doing things authorized by this Code section and shall be regarded as supplemental and additional to powers conferred by the Constitution and laws of the State of Georgia and shall not be regarded as in derogation of any powers now existing.

(i) This Code section, being for the welfare of the state and its inhabitants, shall be liberally construed to effect the purposes thereof.

36-93-4.

The board shall appoint an executive director as the administrative head of the authority. The board shall establish the salary of the executive director. The executive director, with the concurrence and approval of the board, shall hire officers, agents, and employees; prescribe their duties, responsibilities, and qualifications and set their salaries; and perform such other duties as may be prescribed by the authority. Such officers, agents, and employees shall serve at the pleasure of the executive director.

36-93-5.

(a) All prepaid wireless service suppliers shall remit the wireless enhanced 9-1-1 charge collected from their subscribers to the authority, rather than the individual counties, cities, consolidated governments, and regional authorities that have 9-1-1 and enhanced 9-1-1 service.

(b) Such fees shall be remitted in accordance with Code Section 46-5-134.2.

36-93-6.

(a) The authority may retain an amount for administrative fees not to exceed 3 percent of the fees collected.

(b) The remainder of the fees collected through the prepaid wireless service suppliers shall be paid on a pro rata basis to the local governments that provide 9-1-1 and enhanced 9-1-1 service.

36-93-7.

The authority may, in its discretion, audit any telephone, wireless, or Internet provider offering communication services capable of connecting 9-1-1 service to ensure compliance with this chapter and with Part 4 of Article 2 of Chapter 5 of Title 46."

SECTION 2.

Title 46 of the Official Code of Georgia Annotated, relating to public utilities and public transportation, is amended by revising Code Section 46-5-122, relating to definitions relative to the "Georgia Emergency Telephone Number 9-1-1 Service Act of 1977," as follows:

"46-5-122.

As used in this part, the term:

(1) 'Addressing' means the assigning of a numerical address and street name (the name may be numerical) to each location within a local government's geographical area necessary to provide public safety service as determined by the local government. This address replaces any route and box number currently in place in the 9-1-1 data base and facilitates quicker response by public safety agencies.

(2) 'Agency' means the Georgia Emergency Management Agency established pursuant to Code Section 38-3-20 unless the context clearly requires otherwise.

(2.1) 'Authority' means the Local Government Prepaid Wireless 9-1-1 Fee Collection Authority established pursuant to Code Section 36-93-3.

~~(2.1)~~(2.2) 'Call' means any communication, message, signal, or transmission.

~~(2.2)~~(2.3) 'Center' means the Georgia Public Safety Training Center.

~~(2.3) 'Department' means the Department of Community Affairs established pursuant to Code Section 50-8-1.~~

(3) 'Director' means the director of emergency management appointed pursuant to Code Section 38-3-20.

(4) 'Cost recovery' means the mechanism by which service suppliers may recover the recurring and nonrecurring costs they expend on the implementation of wireless 9-1-1 services.

(5) 'Emergency 9-1-1 system' or '9-1-1 system' means a telephone service, computer service, wireless service, or other service which facilitates the placing of calls by persons in need of emergency services to a public safety answering point by dialing the telephone number 9-1-1 and under which calls to 9-1-1 are answered or otherwise responded to by public safety answering points established and operated by the local government subscribing to the 9-1-1 service. The term 'emergency 9-1-1 system' also includes 'enhanced 9-1-1 service,' which means an emergency system that provides the user with emergency 9-1-1 system service and, in addition, directs 9-1-1 calls to appropriate public safety answering points by selective routing based on the geographical location from which the call originated and provides the capability for automatic number identification and automatic location identification features.

(6) 'Enhanced ZIP Code' means a United States postal ZIP Code of 9 or more digits.

(7) 'Exchange access facility' means the access from a particular telephone subscriber's premises to the telephone system of a service supplier. Exchange access facilities include service supplier provided access lines, PBX trunks, and Centrex network access registers, all as defined by tariffs of the telephone companies as approved by the Georgia Public Service Commission. The term 'exchange access facility' also includes Voice over Internet Protocol service suppliers and any other communication, message, signal, or information delivery system capable of initiating a 9-1-1 emergency call. Exchange access facilities do not include service supplier owned and operated telephone pay station lines, Wide Area Telecommunications Services (WATS), Foreign Exchange (FX), or incoming only lines.

(8) 'FIPS' means the Federal Information Processing Standard (FIPS) 55-3 or any future enhancement.

(9) 'Local government' means any city, county, military base, or political subdivision of Georgia and its agencies.

(9.1) 'Local Government Prepaid Wireless 9-1-1 Fee Collection Authority' means the authority established pursuant to Code Section 36-93-3.

(10) 'Mobile telecommunications service' means commercial mobile radio service, as such term is defined in 47 C.F.R. Section 20.3.

(11) '9-1-1 charge' means a contribution to the local government for the 9-1-1 service start-up equipment costs, subscriber notification costs, addressing costs, billing costs, nonrecurring and recurring installation, maintenance, service, and network charges of a service supplier providing 9-1-1 service pursuant to this part, and costs associated with the hiring, training, and compensating of dispatchers employed by the local government to operate said 9-1-1 system at the public safety answering points.

(11.1) '9-1-1 number' means the digits, address, Internet Protocol address, or other information used to access or initiate a call to a public safety answering point.

(12) 'Place of primary use' means the street address representative of where the customer's use of the mobile telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer.

(12.1) 'Prepaid wireless service' means any method pursuant to which a customer pays a wireless service ~~provider~~ supplier in advance for a wireless telecommunications connection. Such term shall include, without limitation, calling or usage privileges included with the purchase of a wireless telephone as well as additional calling or usage privileges purchased by any means, including, without limitation, a calling card, a wireless communication, or an Internet transaction.

(13) 'Public agency' means the state and any city, county, city and county, municipal corporation, chartered organization, public district, or public authority located in whole or in part within this state which provides or has authority to provide fire-fighting, law enforcement, ambulance, medical, or other emergency services.

(14) 'Public safety agency' means a functional division of a public agency which provides fire-fighting, law enforcement, emergency medical, suicide prevention, emergency management dispatching, poison control, drug prevention, child abuse, spouse abuse, or other emergency services.

(15) 'Public safety answering point' means the public safety agency which receives incoming 9-1-1 telephone calls and dispatches appropriate public safety agencies to respond to such calls.

(16) 'Service supplier' means a person or entity who provides telephone service to a telephone subscriber or to a thirty-party retail seller of the service.

(16.1) 'Telephone service' means any method by which a 9-1-1 emergency call is delivered to a public safety answering point. The term 'telephone service' shall include local exchange telephone service or other telephone communication service, wireless service, prepaid wireless service, mobile telecommunications service, computer service, Voice over Internet Protocol service, or any technology that delivers or is required by law to deliver a call to a public safety answering point.

(17) 'Telephone subscriber' means a person or entity to whom telephone service, either residential or commercial, is provided. When the same person, business, or organization has several telephone access lines, each exchange access facility shall constitute a separate subscription. When the same person, business, or organization has several wireless telephones, each wireless telecommunications connection shall constitute a separate connection.

(17.1) 'Voice over Internet Protocol service' means any technology that permits a voice conversation using a voice connection through a telephone jack or to a computer, whether through a microphone, a telephone, or other device, which sends a digital signal over the Internet through a broadband connection to be converted back to the human voice at a distant terminal and that delivers or is required by law to deliver a call to a public safety answering point. Voice over Internet Protocol service shall also include interconnected Voice over Internet Protocol service, which is service that enables real-time, two-way voice communications, requires a broadband connection from the user's location, requires Internet protocol compatible customer premises equipment, and allows users to receive calls that originate on the public service telephone network and to terminate calls to the public switched telephone network.

(17.2) 'Voice over Internet Protocol service supplier' means a person or entity who provides Voice over Internet Protocol service to subscribers for a fee.

(18) 'Wireless enhanced 9-1-1 charge' means a contribution to the local government for the following:

(A) The costs to the local government of implementing or upgrading, and maintaining, an emergency 9-1-1 system which is capable of receiving and utilizing the following information, as it relates to 9-1-1 calls made from a wireless telecommunications connection: automatic number identification, the location of the base station or cell site which receives the 9-1-1 call, and the location of the wireless telecommunications connection;

(B) Nonrecurring and recurring installation, maintenance, service, and network charges of a wireless service supplier to provide the information described in subparagraph (A) of this paragraph; and

(C) Other costs which may be paid with money from the Emergency Telephone System Fund, pursuant to subsection (e) of Code Section 46-5-134.

(19) 'Wireless service' means 'commercial mobile service' as defined under Section 332(D) of the federal Telecommunications Act of 1996 (47 U.S.C. Section 157, et seq.), regulations of the Federal Communications Commission, and the Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66) and includes real-time, two-way interconnected voice service which is provided over networks which utilize intelligent switching

capability and offer seamless handoff to customers. The term does not include one-way signaling service, data transmission service, nonlocal radio access line service, or a private telecommunications service. The term does include prepaid wireless service.

(20) 'Wireless service supplier' means a provider of wireless service.

(21) 'Wireless telecommunications connection' means any mobile station for wireless service that connects a provider of wireless service to a provider of telephone service."

SECTION 3.

Said title is further amended by revising Code Section 46-5-123, regarding the creation of a 9-1-1 Advisory Committee, as follows:

"46-5-123.

(a) For the purposes of the development and implementation of a plan for the state-wide emergency 9-1-1 system, there is created the 9-1-1 Advisory Committee to be composed of the director of the agency, who shall serve as chairperson; the director of the Georgia Technology Authority or his or her designee; the ~~commissioner of the department~~ executive director of the Local Government Prepaid Wireless 9-1-1 Fee Collection Authority or his or her designee; and 12 other members appointed by the Governor, as follows:

(1) Three members appointed from nominees of the Georgia Municipal Association;

(2) Three members appointed from nominees of the Association County Commissioners of Georgia;

(3) Four members who are experienced in and currently involved in the management of emergency telephone systems; and

(4) Two members who are representatives of the telecommunications industry, one of whom shall be a representative of a wireless service supplier and one of whom shall be a representative of a land based service supplier.

(b) When appointments are made, the associations making nominations pursuant to this Code section shall submit at least three times as many nominees as positions to be filled at that time by nominees of the association.

(c) The appointed members of the committee shall serve at the pleasure of the Governor. Vacancies shall be filled in the same manner as the original appointment.

(d) The committee shall organize itself as it deems appropriate and may elect other officers from among its members.

(e) The committee shall hold meetings at the call of the chairperson; provided, however, that it shall meet at least three times a year. A quorum for transacting business shall be a majority of the members of the committee.

(f) The committee shall be assigned to the agency for administrative purposes only, as prescribed in Code Section 50-4-3.

(g) The committee shall have the following duties and responsibilities:

~~(1) To make recommendations to the commissioner of the department regarding the recipients of assistance grants provided for under Code Section 46-5-134.2;~~

~~(2)~~(1) To study and evaluate the state-wide provision of 9-1-1 service;

~~(3)~~(2) To identify any changes necessary to accomplish more effective and efficient 9-1-1 service across this state;

~~(4)~~(3) To identify any changes necessary in the assessment and collection of 9-1-1 fees;

~~(5)~~(4) To make recommendations to the agency as to training that should be provided to directors of public safety answering points; and

~~(6)~~(5) To provide an annual report which shall include proposed legislation, if any, to the Governor and the General Assembly by December 1 of each year.

SECTION 4.

Said title is further amended by revising Code Section 46-5-134.2, relating to 9-1-1 charge for prepaid wireless service, as follows:

"46-5-134.2.

(a) A 9-1-1 charge shall be imposed on all prepaid wireless service subscribed to by telephone subscribers as provided in this Code section. Prepaid wireless service suppliers shall be responsible for the 9-1-1 charge; provided, however, that such 9-1-1 charge may be passed on to the wireless telephone subscriber or retail seller of such wireless telephones. A company that sells prepaid wireless devices to a third-party retail seller shall be responsible for the 9-1-1 charge imposed on all prepaid wireless service. For purposes of this Code section, companies that sell prepaid wireless devices to a third-party retail seller shall be considered a prepaid wireless service supplier.

(b) A prepaid wireless service supplier shall:

(1) ~~Charge and collect~~ Remit to the authority a fee in the amount of 3 percent of the wholesale price divided by .7 of each block of prepaid wireless service purchased by each telephone subscriber, whether such service is included with the initial purchase of a wireless telephone or other device or is recorded on a wireless telephone or other device by the purchase of a calling card, through an Internet transaction, by means of a wireless communication directly to the telephone subscriber's wireless telephone or other device, or by any other means;

(2) ~~Charge and collect~~ Remit to the authority a fee in the amount of 3 percent of the suggested retail price of each block of prepaid wireless service purchased by each telephone subscriber, whether such service is included with the initial purchase of a

wireless telephone or other device or is recorded on a wireless telephone or other device by the purchase of a calling card, through an Internet transaction, by means of a wireless communication directly to the telephone subscriber's wireless telephone or other device, or by any other means;

(3) Divide the total prepaid wireless service revenue earned and received in this state by such prepaid wireless service supplier in a calendar month by \$50.00 and multiply the quotient by \$1.50 to determine the amount of the fee to be paid to the ~~department~~ authority;

(4) Charge and collect a fee in the amount of \$1.50 from the account of each prepaid wireless service telephone subscriber who has a sufficient positive balance as of the last day of the month; or

(5) Use any other method to charge and collect the fee; provided, however, that in no event shall the prepaid wireless service supplier charge and collect less than \$1.50 per the average monthly amount of prepaid wireless service actually provided to a telephone subscriber.

(c) A prepaid wireless service supplier shall indicate the method it elects to use pursuant to subsection (b) of this Code section on reports filed with the ~~department~~ authority and on receipts issued to the wholesale purchaser. The prepaid wireless service supplier shall include on the reports filed with the authority the amounts collected according to enhanced ZIP Codes and any other information required by the authority.

(d) All fees provided for in this Code section shall be paid to the ~~department~~ authority. A prepaid wireless service supplier may pay all such fees it collects throughout this state in a single remittance. Such fees shall be remitted monthly to the ~~department~~ authority not later than the twentieth day of the month following the month in which they are collected. Any fee not paid in a timely manner shall accrue interest at the rate of 15 percent per annum, compounded daily, until the date they are paid. ~~The department shall deposit all funds received into the general fund of the state treasury in compliance with Article 4 of Chapter 12 of Title 45, the 'Budget Act.'~~

(e) The 9-1-1 Advisory Committee or the authority may, upon a majority vote of its members, audit or cause to be audited by the state auditor, or some other auditor agreed upon by a majority of the committee's members, the financial and business records of any service supplier to the extent necessary to ensure proper collection and remittances in accordance with this Code section. Failure of the service supplier to comply with an audit request shall result in a civil penalty of not more than \$1,000.00 per day the service supplier refuses compliance.

~~(f)(1) There is created the Emergency 9-1-1 Assistance Fund to be administered by the department. It is the intention of the General Assembly, subject to the appropriation~~

process, that an amount equal to the amount deposited into the general fund of the state treasury as provided in subsection (d) of this Code section be appropriated each year to the fund; provided, however, that any such funds unused at the end of each fiscal year shall lapse back into the state treasury as required by Article III, Section IX, Paragraph IV of the Constitution.

(2)(A) Any governmental entity which operates, is in the process of implementing, or is developing a plan for the implementation of a local, regional, or state-wide emergency system may apply to the department for and receive an assistance grant from the Emergency 9-1-1 Assistance Fund for the purchase or upgrade of equipment.

(B) The center may apply to the department for and receive a grant from the Emergency 9-1-1 Assistance Fund to provide professional training to directors, as the term is defined in Code Section 46-5-138.2.

(C) The agency may apply to the department for and receive a grant from the Emergency 9-1-1 Assistance Fund for the reasonable administrative costs of supporting the 9-1-1 Advisory Committee as provided for in Code Section 46-5-123.

(3) Decisions on the issuance of assistance grants shall be made by the 9-1-1 Advisory Committee established by Code Section 46-5-123.

(g) The department shall promulgate written rules and regulations to provide for the application process and for the administration of the Emergency 9-1-1 Assistance Fund, and to otherwise implement the provisions of this Code section.

(h) The department shall be authorized to use a portion of the funds collected pursuant to this Code section to provide for the direct and indirect costs associated with the administration of this Code section."

SECTION 5.

This Act shall become effective on January 1, 2011.

SECTION 6.

All laws and parts of laws in conflict with this Act are repealed.